

Transport Workers of America, AFL–CIO and its Local 525¹ (Johnson Controls World Services, Inc.) and Douglas J. Nelson. Case 12–CB–3801

October 30, 1998

**SUPPLEMENTAL DECISION AND ORDER
BY MEMBERS FOX, HURTGEN, AND BRAME**

On July 31, 1998, the National Labor Relations Board, by a three-member panel, issued a Decision and Order in the above-entitled case,² finding that the Respondents, Transport Workers of America, AFL–CIO, and its Local 525, violated Section 8(b)(1)(A) by threatening to invoke the contractual union-security provision against Charging Party Douglas J. Nelson if Nelson ceased paying dues after the Local had lawfully expelled him from membership. Remedially, the Board ordered the Respondents to cease and desist their unlawful conduct and to post a notice.

Thereafter, the Charging Party filed a Motion for Reconsideration of Remedy or to Correct Inadvertent Error. In this motion, Charging Party Nelson contends that the Board should additionally order the Respondents to make him whole by reimbursing him for any dues and fees paid beginning 6 months prior to the February 17, 1994 filing of his unfair labor practice charge. The Charging Party argues that this remedy is appropriate because, at no time since Local 525 expelled him from membership in 1992, did the Respondents inform Nelson that he was no longer subject to the union-security clause. *Machinists Local 575 (McDonnell Douglas Corp.)*, 283 NLRB 881, 894-895 (1987); *Telephone Traffic Union (New York Telephone Co.)*, 241 NLRB 826 (1979). Alternatively, the Charging Party argues that the Respondents should be ordered to reimburse him for any dues and fees he paid since February 8, 1994, the date on which the Respondents made the threat found to violate Section 8(b)(1)(A) of the Act. *Steelworkers Local 4186 (McGraw Edison Co.)*, 181 NLRB 992, 996 (1970).

The Respondents oppose the Charging Party's motion. They argue that, because the complaint did not specifically request the refund of back dues payments, it is improper to award that remedy now.

The General Counsel supports the Charging Party's motion in part. The General Counsel contends that, although a party cannot expand on the General Counsel's theory of a case, the Charging Party's motion is meritorious because it seeks a monetary remedy for the 8(b)(1)(A) violation found. Further, the General Counsel argues, remedial issues are "traditionally within the Board's province and may be addressed by the Board in the absence of exceptions." *Indian Hills Care Center*, 321 NLRB 144 at fn. 3 (1996). On the merits, the Gen-

eral Counsel argues that the Board's Order should be modified to require that the Respondents reimburse Nelson for all dues and fees paid since February 8, 1994, the date of the violation. However, because the only alleged and litigated theory of violation was the Respondents' unlawful threat to invoke the union-security discharge provisions—and not their failure to notify Nelson that his dues and fees obligations ceased on expulsion from membership—the General Counsel opposes a make-whole remedy that predates the 8(b)(1)(A) violation. Cf. *Machinists Local 575 (McDonnell Douglas Corp.)*, supra.

Having reconsidered the Board's Decision and Order in light of the motion and briefs, we conclude that further remedial relief is warranted. Contrary to the Respondents' contention, such relief is not precluded on the basis that it was not specifically pled. It is well settled that Section 10(c) confers on the Board "broad discretionary" authority to fashion remedial awards. *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 216 (1964); also see *N.C. Coastal Motor Lines*, 219 NLRB 1009 (1975), enf'd. 542 F.2d 637 (4th Cir. 1976) (no requirement that complaint allege a remedy).

As to the issue of what the additional remedy should be, we agree with the General Counsel. The Respondents unlawfully threatened Nelson with discharge if he failed to remit dues and fees. Nelson made the payments in light of that threat. Therefore, the Respondents will be required to reimburse him for dues and fees paid since that threat. Such a make-whole remedy is necessary to undo the effects of the Respondents' unlawful conduct. Further, this remedy is consistent with remedial relief that the Board has ordered in comparable circumstances. *Steelworkers Local 4186 (McGraw Edison Co.)*, supra.

We will not order reimbursement for periods prior to the threat. As no violation was alleged or found based on the Respondents' failure to advise Nelson concerning his obligation to pay dues and fees, no remedy is warranted in that respect.

Accordingly, we grant the Charging Party's motion for reconsideration and modify the Board's Decision and Order to include the following remedy section, amend the Order as indicated below, and substitute the attached notice.

REMEDY

Having found that the Respondents engaged in an unfair labor practice, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondents to cease and desist from their unlawful conduct and to post the attached notice. In addition, the Respondents shall be required to reimburse Douglas J. Nelson for all dues and assessments which he paid to them since February 8, 1994,

¹ Pursuant to the General Counsel's motion, the name of the Respondents is corrected.

² 326 NLRB 8. Member Brame did not participate in that decision.

with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The Charging Party's Motion for Reconsideration of Remedy or to Correct Inadvertent Error is granted and the Board's Order in the Decision and Order is modified. Accordingly, the Respondents, Transport Workers Union of America, AFL-CIO, New York, New York, and Transport Workers Union of America, Local 525, Cocoa Beach, Florida, their officers, agents, and representatives, shall take the action set forth in the Order as modified:

1. Insert the following as paragraphs 2(a) and (b), and reletter the subsequent paragraphs.

"(a) Reimburse Donald J. Nelson, with interest, for any dues or fees exacted from him since February 8, 1994.

(b) Preserve and, on request, make available to the Board or its agents, for examination and copying, all records necessary to verify the amounts of reimbursement due to Donald J. Nelson."

2. Substitute the attached notice for that in the Decision and Order.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge pursuant to a valid union-security provision if they cease paying dues or agency fees in circumstances where we have previously expelled them from membership for decertification activities protected by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse Donald J. Nelson, with interest, for all membership dues and fees that we have collected from him since February 8, 1994.

TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO

TRANSPORT WORKERS UNION OF
AMERICA, LOCAL 525